

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE COUNTY SHERIFF,

Intervening Plaintiff-Appellant,

v

CLUB 747, TOP FLIGHT ENTERTAINMENT,
and ALAN MARKOVITZ,

Defendants-Appellees.

UNPUBLISHED

October 17, 2006

No. 260188

Wayne Circuit Court

LC No. 97-790200-CF

Before: Davis, P.J., and Cooper and Borrello, JJ

DAVIS, J. (*concurring*).

I agree with the facts stated by the majority and with the result reached. I write separately because I believe the Wayne County Sheriff cannot be bound by an agreement of the kind involved because of his role as a constitutional officer. I do not believe any further analysis is necessary.

This Court reviews de novo constitutional questions. *Co Rd Ass’n of Michigan v Governor*, 474 Mich 11, 14; 705 NW2d 680 (2005). “In Michigan, the state’s duty of law enforcement for the protection of its citizens has been constitutionally delegated to the county in the person of the sheriff.” *Nat’l Union of Police Officers Local 502-M, AFL-CIO v Bd of Comm’rs of Wayne Co*, 93 Mich App 76, 82; 286 NW2d 242 (1979). “The sheriff is a peace officer charged with enforcing the laws enacted by the Legislature under the police power . . . of the state, which may be delegated to subordinate governmental agencies or divisions, but may not be otherwise delegated or bargained away, being an inherent attribute of sovereignty.” *Id.* By law, the Wayne County Sheriff is under a duty to enforce the law, including the laws that were the subject of the consent judgment.

There is no indication that the Wayne County Sheriff delegated the duty to enforce those laws to a “subordinate governmental agency or division,” nor is there any indication that the consent judgment or order would do so. It would be both malfeasance and unconstitutional for

the Wayne County Sheriff to contract that duty away. No one can purport to carry out the duty to enforce the law in the Wayne County Sheriff's stead. The effect of the consent judgment is to place an unconstitutionally impermissible restriction on the Wayne County Sheriff's constitutional duties. It would appear that the trial judge recognized that fact in the judgment and subsequently corrected it.

I would hold only that under the Michigan Constitution, the Wayne County Sheriff is not bound by the consent judgment.

/s/ Alton T. Davis